IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22394 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

LATE SHRI RATANSINHJI SODHA CHARITABLE TRUST - Petitioner(s)

Versus

SAURASHTRA UNIVERSITY & 1 - Respondent(s)

==========

Appearance :

MS MAMTA R VYAS for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
MR AR THACKER for Respondent(s) : 1,
MR HM PRACHHAK AGP for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, order and/or direction to quash and set aside the order dtd.12/8/005 issued by the respondent NO.1 - Saurashtra University. And order dtd.25/7/2005 passed by the respondent No.2. The petitioner has also prayed for a declaration that the University is not bound to follow the directives issued by the State Government in the matter of grant of affiliation to the College. The petitioner has also prayed for a declaration that for grant and/or refusal of NOC by the State Government and/or University is not conclusive for the NCTE for taking

decision either to grant or to refuse to grant recognition to the petitioner institution for starting B.Ed.College at Rajkot. The petitioner has also prayed to quash and set aside the decision / communication of the respondent No.2 – State of Gujarat dtd.25/7/2002 by which the Deputy Secretary, Eduction Department has directed the Saurashtra University not to grant any fresh affiliation, as the State Government has decided not to grant NOC at present.

2.It is the case of the petitioner that as the petitioner – trust intends to start B.Ed. College within the local area of the Saurashtra University and therefore, affiliation of the Saurashtra University was necessary and the petitioner trust submitted an application to the University for grant of affiliation in the prescribed format and the said application was made on 17-6-2005. It is the case of the

petitioner that surprisingly and shockingly in a cyclostyled pre-typed order dated 9-8-2005, petitioner is informed that as the State Government has directed the university not to grant NOC to new B.Ed. Colleges, the university is required to refund the amount of fees for affiliation paid by the petitioner. Therefore, the petitioner has approached this court by way of present Special Civil Application for the aforesaid reliefs.

3.It is required to be noted that now, the earlier Regulations of 2002 are repealed and it is replaced by NCTE (Recognition, Norms and Procedure) Regulation, 2005 w.e.f.13/1/2006 and as per new Regulations of 2005, requirement of submitting NOC / endorsement of the State Government is not included and the applicant institute were earlier required to obtain NOC of the State Government, however, as per new

Regulations of 2005, NCTE itself will obtain opinion of the State Government under Sub-Rule-(3) and (C) of Rule-7. So far as the question of affiliation by the respondent University is concerned, Sub-regulation-(6) of Regulation 14 of the NCTE Act provides that the University shall grant affiliation after grant of recognition by NCTE and it is also provided that the University shall withdraw the affiliation in case of refusal of recognition by the NCTE and therefore, it appears that it would be unnecessary to issue any direction to the University to consider the application for affiliation.

4.Heard learned advocates appearing on behalf of the parties.

5.Identical question came to be considered by this court in group of Special Civil

Applications being Special Civil Application No.No.612 of 2006 and other cognate matters and it is held by this court that the pending applications which are now to be considered by the NCTE for recognition from 2006-2007, are required to be considered considering the provisions of new NCTE (Recognition, Norms & Procedure) Regulations, 2005 and under the said Regulation, the requirement of submission of NOC/endorsement of the State Government is not there and as per the new Regulations, the NCTE itself will obtain the opinion of the State Government under Regulation 7(3). Under the circumstances, the NCTE is directed to consider the the application submitted by the petitioner in light of the NCTE (Recognition, Norms & Procedure) Regulations, 2005 and after following necessary procedure as required under Regulation 7 and considering the judgment and order passed by this court dated 2-2-2006

rendered in Special Civil Application No.No.612 of 2006 and other allied matters.

6.So far as the affiliation by the respondent-university is concerned, the same is required to be considered only after the NCTE grants recognition as per Section 14(6) of the NCTE Act. The university is required to grant affiliation only after grant of recognition by the NCTE. Under the circumstances, if ultimately the NCTE grants recognition in favour of the petitioner, it will be open for the petitioner to submit an appropriate application for grant of affiliation to the respondent university and the same shall be dealt with by the university in accordance with law and on merits and therefore, at present no direction is required to be issued against respondent No.3 for grant of affiliation.

7.For the reasons stated above, the petition partly succeed. Parties are directed to act as stated above. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

rafik